Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

No. 75-1426

October Term, 1975

MURRAY BOGATIN,

Petitioner,

-against-

SUFFOLK COUNTY BAR ASSOCIATION,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, SECOND JUDICIAL DEPARTMENT

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TABLE OF CONTENTS

	Page
Citations to Opinions Below	2
Statement of Jurisdiction	2
Questions Presented	2
Constitutional Provisions and Statute Involved	3
Statement of the Case	4
I. This Court Always has Protected Constitutional Rights in Matters which Generally Are Mostly of Local Concern	7
II. Section 90(2) of the Judiciary Law of the State of New York is Unconstitutional on the Ground it is an Improper Grant of Legislative Power to the Appellate Division	9
III. Rejection by the Appellate Division of the Material Submitted by Petitioner in Mitigation of Punishment Violated Due Process and Equal Protection of the Laws . .	11

Page

IV. The Order Suspending Petitioner From the Practice of Law is an Improper Product of Selective Prosecution and Punishment and Thus Violates Due Process and the Equal Protection Clause . . . 17

Conclusion 24

APPENDICES

	Page
A - Opinion of Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, Suspending Petitioner....	A1
B - Decision of Court of Appeals of the State of New York denying leave to appeal	A3
C - Order of Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, Suspending Petitioner	A4
D - Order of Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, Denying Reargument and Leave to Appeal	A6

TABLE OF AUTHORITIES

	Page
A.L.A. Schechter Poultry Corporation v. United States, 295 U.S. 837	10
Armstrong v. Manzo, 380 U.S. 545	8
Board of Regents v. Roth, 408 U.S. 564	8
Carter v. Carter, 298 U.S. 238	10
Cherry v. Regents, 289 N.Y. 148	10
Erdmann v. Stevens, 458 F.2d 1205	8
Grannis v. Ordean, 234 U.S. 385	8
Greene v. McElroy, 360 U.S. 474	9
In Re Cohen, 43 A.D. 2d 403	15,16,23
In Re Dagher, 370 N.Y.S.2d 679	23
In re Entes, 39'A.D. 2d 182	15,23
In Re Harrison, 47 A.D.2d 259	24
In Re Herman, 37 A.D. 2d 315	20
In Re Impellizzeri, 31 A.D.2d 134	16,24
In Re Kanarek, 33 A.D.2d 280	21
In Re Lentini, 43 A.D.2d 479	14,16,23
In Re McKneally, 44 A.D.2d 610	14
In Re Ross, 38 A.D.2d 98	14,23
In Re Ruffalo, 390 U.S. 544	7
In Re Sala, 11 A.D. 2d 425	20

	Page
In Re Siegel, 47 A.D. 2d 461	14,23,23
In Re Stevenson, 39 A.D. 2d 355	23
Julius Gerzof, Levin and Mildner v. Appellate Division, __ U.S. __ (decided March 29, 1976)	7
Keller v. Potomac Elec. Power Co., 261 U.S. 428	10
Law Students Civil Rights Research Council, Inc. v. Wadmond, 401 U.S. 154, 174 (1971)	8
Matter of Castellano, 361 A.D. 2d 23	17
People v. Papandon, __ A.D. 2d __, 329 N.Y.S. 2d 1000	22
Seignious v. Rice, 273 N.Y. 44	10
Smith v. Goguen, 415 U.S. 566	10
Spevack v. Klein, 385 U.S. 511	7
Willner v. Comm. on Character and Fitness, 373 U.S. 96 (1963)	8-9
Wisconsin v. Constantineau, 400 U.S. 433 (1971)	8

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PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, SECOND JUDICIAL DEPARTMENT

To The Honorable Chief Justice And The Associate Justices of The Supreme Court of The United States:

Your petitioner, Murray Bogatin, prays that a writ of certiorari issue to review an order and decree, entered on October 6, 1975, of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, which suspended petitioner from the practice of law in the State of New York for a period of six months and until the further order of the Court. On January 8, 1976, the Court of Appeals of the State of New York denied petitioner's motion for leave to appeal to said Court from the order of suspension.

BEST COPY AVAILABLE

CITATIONS TO OPINIONS BELOW

The opinion of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, has not as yet been reported, but a copy of that opinion is annexed hereto as Appendix A.

The Court of Appeals of the State of New York in denying leave to appeal rendered no opinion, but a copy of that decision is annexed hereto as Appendix B. Same likewise has not yet been reported.

STATEMENT OF JURISDICTION

The statutory provision believed to confer on this Court jurisdiction to review the order and decree in question is 28 U.S.C. #1257(3). Petitioner also claims that his rights to due process and the equal protection of the laws under the Fourteenth Amendment to United States Constitution were violated when he was suspended from the practice of law.

QUESTIONS PRESENTED

1. Is Section 90(2) of the Judiciary Law of the State of New York unconstitutional and vague on the ground that it gives the Appellate Division of the Supreme Court of the State of New York discretion to censure, suspend or disbar any attorney convicted of a misdemeanor without setting forth any legislative guidelines, that is, no standards are set as to which particular misdemeanor should be disciplined and no differentiation is made as to what conduct requires censure or suspension or disbarment on the part of a convicted attorney?

2. Do the due process and equal protection clauses of the XIVth Amendment entitle an attorney-respondent in a disciplinary proceeding to introduce his military, professional and familial-community record in mitigation of punishment?

3. Do the due process and equal protection clauses of the XIVth Amendment entitle petitioner to receive treatment no harsher than other attorneys similarly situated?

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

United States Constitution Amendment XIV:

> "Section 1...No state shall... deprive any person of...property, without due process of law nor deny to any person within its jurisdiction the equal protection of the laws."

New York State Constitution Article III, §1:

> "The legislative power of this State shall be vested in the Senate and Assembly."

New York State Judiciary Law Section 90(2):

> "...the appellate division of the supreme court in each department is authorized to censure, suspend from practice or remove from office any attorney and counsellor-at-law...who is guilty of... misdemeanor..."

STATEMENT OF THE CASE

Petitioner has been an attorney admitted to practice in the State of New York for twenty-five years. On November 21, 1973, upon a voluntary plea, petitioner was convicted of attempted criminal contempt in a New York local court and was fined the sum of $1,000. On January 28, 1976 a petition for a writ of certiorari from that criminal conviction was filed by petitioner in this Court. As yet no decision is known to petitioner and the Court is respectfully referred to that petition for the facts surrounding the criminal conviction.

On October 6, 1975, the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department entered an order suspending petitioner from practice for a period of six months to commence on November 1, 1975. A copy of said order is annexed hereto as Appendix C. By order dated November 5, 1975, the Appellate Division denied petitioner's motion for a stay of proceedings pending application for leave to appeal to higher courts. A copy of said order is annexed hereto as Appendix D.

The Court of Appeals of the State of New York is the highest judicial tribunal and when said court denied leave to appeal from the order of the Appellate Division (Appendix B) on January 8, 1976, state remedies were exhausted.

Although that suspension order sought to be reviewed first became effective on November 1, 1975, such effective date was extended by the Appellate Division by intermediate applications to April 10, 1976.

Section 90 of the New York Judiciary Law, 29 McKinney's (1968) governs New York's procedures for disciplining attorneys. Accordingly, disciplinary proceedings were thereafter instituted against petitioner in the Appellate Division. The sole charge therein was that petitioner was convicted of the aforesaid crime of attempted criminal contempt and that such conviction was professional misconduct.[1] Ultimately, the Appellate Division held that the disciplinary charge was sustained and thereby suspended him from the practice of law for a period of six months. (Appendix C) Also see Appendix A which states that petitioner "was charged with professional misconduct in that ... he pleaded guilty ... to the crime of attempted criminal contempt." This of course is compatible with Section 90(2) of the New York Judiciary Law which states that "the Appellate division ... is authorized to ... suspend from practice ... any attorney ... who is guilty of ... misdemeanor."

The aforesaid disciplinary proceedings were instituted by service of a petition by the respondent upon the order of the Appellate Division. An answer thereto was interposed by petitioner. The matter was then referred by the Appellate Division to Honorable David L. Glickman, a justice of the Supreme Court of the State of New York, to hear and report. Ultimately the Appellate Division confirmed the report filed by the referee. (See Appendix C)

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1. See petition served and filed in the disciplinary proceeding.

The referee concluded that petitioner's misdemeanor conviction "constitutes professional misconduct".[2] The Appellate Division agreed with such conclusion.[3]

Thus, the Appellate Division and the referee each determined that a misdemeanor conviction, per se, is professional misconduct.

The Referee did not give any opprobrious characterization to the conviction or any acts of petitioner. As a matter of fact it would appear that the report is meticulously absent of any adjectives.

It is also important to note that the Referee at no place or time made any express finding that petitioner failed to answer questions before the grand jury or was otherwise contemptuous.

The Appellate Division, likewise, in its order and decision disciplining petitioner made no derogatory characterization as to the criminal conviction nor to petitioner's conduct.

Federal and constitutional issues were raised by petitioner in the answer filed by him in the disciplinary hearings, the motion for re-argument and leave to appeal before the Appellate Division and again on the motion to the Court of Appeals for leave to appeal. Since these motions were all denied, it is clear

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2. See page A2 of Appendix.

3. See page A2 of Appendix.

that petitioner's federal and constitutional arguments were rejected by the New York Courts.

REASONS FOR GRANTING THE WRIT

I. THIS COURT ALWAYS HAS PROTECTED CONSTITUTIONAL RIGHTS IN MATTERS WHICH GENERALLY ARE MOSTLY OF LOCAL CONCERN.

Petitioner recognizes that this Court, as well as lower federal courts, are reluctant to interfere with the disciplining of attorneys in the various individual states. As per the very recent Julius Gerzof, Levin, and Mildner v. Appellate Division, __ U.S.__ (decided March 29, 1976).

However, where substantial constitutional rights are concerned this Court has not hesitated to intervene. See Spevack v. Klein, 385 U.S. 511.

Because of the sanctions involved this Court has characterized disciplinary proceedings as being of a "quasi-criminal nature."

In re Ruffalo, 390 U.S. 544 (1968). Thus, the private interest affected by a disciplinary proceeding is substantial indeed.

> "*** [I]t cannot be disputed that for most attorneys the license to practice law represents their livelihood, loss of which may be a greater punishment than a monetary fine. [Citations omitted.] Furthermore, disciplinary measures against an attorney, while posing a threat of incarceration only in case of contempt, may threaten

another serious punishment - loss of professional reputation. The stigma of such a loss can harm a lawyer in his community and in his client relations, as well as adversely affect his ability to carry out his professional functions ***". Erdmann v. Stevens, 458 F.2d 1205, 1210 (2d Cir.), cert. denied, 409 U.S. 889 (1972).

While it takes no citation of case to establish the proposition that New York has a need, indeed an obligation to provide effective attorney discipline, the means by which it does so must be weighed against the significant private interests affected. And, therefore, the decisions of this Court teach that "*** when a State seeks to *** disbar a lawyer, it must proceed according to the most exacting demands of due process of law". Law Students Civil Rights Research Council, Inc. v. Wadmond, 401 U.S. 154, 174 (1971) (Black & Douglas, JJ., dissenting).

No matter how closely one parses the concept of due process it is beyond dispute that at the minimum, the XIVth Amendment requires a full and fair opportunity to be heard, Grannis v. Ordean, 234 U.S. 385, 394 (1914); and further, that the hearing "*** must be granted *** in a meaningful manner." Armstrong v. Manzo, 380 US. 545, 552 (1965). This is particularly true when, as here, a person's good name, integrity, reputation or honor is at stake because of governmental action. See, e.g., Board of Regents v. Roth, 408 U.S. 564 (1972); Wisconsin v. Constantineau, 400 U.S. 433 (1971); Willner v. Comm. on

Character and Fitness, 373 U.S. 96 (1963); Greene v. McElroy, 360 U.S. 474 (1959).

II. SECTION 90(2) OF THE JUDICIARY LAW OF THE STATE OF NEW YORK IS UNCONSTITUTIONAL ON THE GROUND IT IS AN IMPROPER GRANT OF LEGISLATIVE POWER TO THE APPELLATE DIVISION.

Section 90(4) of the N.Y. Judiciary Law provides for automatic, immediate disbarment of an attorney convicted of a felony. This statutory language is clear and explicit. The legislature has spoken and there is no doubt as to what was said. No judicial exercise is needed.

However, it is not so with those convicted of a misdemeanor. The legislature has not mandated that all attorneys so convicted shall be disciplined. Section 90(2) merely provides that the Appellate Division "is authorized" to discipline attorneys convicted of misdemeanors. Thus, the Appellate Division is not even required to discipline all such attorneys. That Court decides which ones will be punished and which ones will remain free from punishment. No guide lines are even set forth by the legislature.

It is respectfully submitted that such a grant of power and vagueness is an unconstitutional delegation of legislative power to the Appellate Division by the New York State Legislature and should now be struck down.

The Constitution of the State of New York, Article III, Sec. 1 provides as follows:

> "The legislative power of this State shall be vested in the Senate and Assembly."

A violation of that article can be corrected by this Court through the due process clause of the XIV Amendment.

Likewise, for the punishment to be handed down for disciplinary sanctions Section 90(2) empowers the Appellate Division to "censure" or "suspend" or even disbar such an attorney. Since no guidelines are set out for cases requiring censure, suspension or disbarment, the Appellate Division again finds itself improperly exercising a legislative function. The Appellate Division should not be permitted to retain such unconstitutional power. Section 90(2) should be declared unconstitutional in its entirety. See the cases of,

Smith v. Goguen, 415 U.S. 566,
Carter v. Carter, 298 U.S. 238,
A.L.A. Schechter Poultry Corporation v. United States, 295 U.S. 837,
Keller v. Potomac Elec. Power Co., 261 U.S. 428,
Cherry v. Regents, 289 N.Y. 148, and
Seignious v. Rice, 273 N.Y. 44.

III. REJECTION BY THE APPELLATE DIVISION OF THE MATERIAL SUBMITTED BY PETITIONER IN MITIGATION OF PUNISHMENT VIOLATED DUE PROCESS AND EQUAL PROTECTION OF THE LAWS.

Although severity of punishment generally is not a subject for review by this Court, it is respectfully submitted that the rejection of certain material presented by petitioner for the purpose of mitigating punishment created a substantial constitutional issue which should now be reviewed.

In this connection petitioner submitted a number of letters to the referee from judges, a rabbi and a veteran's organization. These letters referred to his court appearances, military service and awards, and family status. However, the referee rejected such letters. It is now contended that the letters should not have been rejected and the Appellate Division should have taken cognizance of the contents of same.[4]

A letter from Veterans of Foreign Wars shows that petitioner is a decorated veteran of World War II, having participated in aerial combat over enemy land.

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4. Said letters are set forth as Exhibits F to N in petitioner's motion for leave to appeal to Court of Appeals of the State of New York.

Another letter from a clergyman indicated petitioner's proportion as a husband and father.

The following comments pertaining to petitioner were submitted by several judges:

> "...I have found him to be zealous and forthright in the representation of his clients, and at no time did he ever exhibit before me conduct which might be considered a violation of the Code of Professional Responsibility." Supreme Court Justice Thomas M. Stark.
>
> "He has appeared before me many times, and in each instance has been forthright, respectful and courteous to the Court." Supreme Court Justice elect Raymond L. Wilkes, Administrative Judge of County Court of Nassau County.
>
> "On each occasion that he appeared before me he conducted himself in an honest, forthright and courteous manner.
>
> I would further add that Mr. Bogatin is a knowledgeable attorney and counsellor and has always demonstrated the utmost competence in the representation of his clients." County Court Judge Oscar Murov.
>
> "He has appeared before me on many occasions, and has always represented his clients with competence and never

has sought to avoid any appearance before me.

At all times I have found him to be truthful and properly respectful to the Court.

As an active criminal trial attorney he has facilitated the daily business of the Court, and I trust he shall be able to continue such endeavors in behalf of the Court as well as for his clients." District Court Judge John Copertino.

"That in every instance before the Bench, and in private practice he has been honest, forthright and courteous to the Court." District Court Judge Rudolph L. Mazzei.

"...Murray has appeared before me in a number of criminal matters and has always treated me with the utmost respect and courtesy.

I have found him to be an extremely knowledgeable and competent attorney." District Court Judge Alfred M. Lama; annexed as Exhibit "M".

"... Mr. Bogatin has appeared before me on numerous occasions and I have found him to be conscientious, diligent and competent with respect to his ability in representing litigants before me in the District Court of the County of Suffolk.

I have always found him to be extremely helpful and courteous in his dealings with the Court." District Court Judge William M. Perry.

In disciplinary proceedings it always has been standard operating procedure to include personal references as to professional competence, military service and family status.

Thus, while the disregard of petitioner's letters by the prosecutor, referee and Appellate Division is somewhat graceless, it is respectfully urged that such is highly prejudicial, violative of petitioner's rights and contrary to well-established legal authority.

The various Appellate Divisions have always accepted such references as to reputation. See the following cases:

1. In Re Lentini, 43 A.D. 2d 479, wherein the court relied upon the attorney's "reputation among officials".

2. In Re Siegel, 47 A.D. 2d 461, wherein the court likewise recognized the fact that "Numerous letters were submitted attesting to the writer's personal or professional regard for respondent".

3. In Re McKneally, 44 A.D. 2d 610, wherein the court "considered" the attorney's "public service".

4. In Re Ross, 38 A.D. 2d 98, wherein court noticed the "high regard in which

respondent is held in the community".

5. In Re Cohen, 43 A.D. 2d 403, wherein court gave credit to the attorney's familial status by observing that he is "married for some 27 years and the father of two children".

6. In Re Entes, 39 A.D. 2d 182, wherein the attorney had recommendations from "members of Judiciary" and he was "married since 1938" and had two sons and daughter.

In view of the consistency of the foregoing cases, how can there be any justification for the rejection of the letters herein?

During World War II petitioner served in the army air force. He was a lieutenant and, as a bombardier, he flew 25 combat bombing missions over Germany with the Eighth Air Force. His military awards include the Air Medal with three oak leaf clusters and the European Theater Operations ribbon with three battle stars. When the war ended, petitioner received an honorable discharge.

This information, too, was excluded by the Referee and court. Such exclusion has no reasonable explanation and violates the constitutional concept of equal protection of the law.

Is there a felon of the most severe degree who has had his military service record excluded from his probation or pre-sentence report?

This unseemly omission is particularly incredulous in view of prior judicial decisions in disciplinary matters. See the following cases:

1. In Re Lentini, supra, wherein the attorney's "distinguished military record" was cited.

2. In Re Cohen, supra, the court noted that "During World War II respondent served in the armed forces overseas and was discharged with the rank of Captain."

3. In Re Impellizzeri, 31 A.D. 2d 134, the court recognized that the attorney was "engaged in outstanding military service ... during World War II".

IV. THE ORDER SUSPENDING PETITIONER FROM THE PRACTICE OF LAW IS AN IMPROPER PRODUCT OF SELECTIVE PROSECUTION AND PUNISHMENT AND THUS VIOLATES DUE PROCESS AND THE EQUAL PROTECTION CLAUSE

Although it is recognized that no two cases are "exactly alike," an evaluation of similar cases will show the "shabby" treatment afforded petitioner by his home court.

As far as petitioner can determine, no attorney guilty of contempt alone has been suspended from practice in New York.

Furthermore, in a large number of cases where attorneys have been convicted of crimes more serious than the circumstances herein, no suspensions were imposed upon the respective individuals.

In contempt situations involving disciplinary proceedings the Courts generally have done no more than censure the attorneys involved.

A most recent decision is that of the same Appellate Division entitled Matter of Castellano, 361 A.D. 2d 23.

Therein, Mr. Castellano was convicted on his plea of guilty, in the United States District Court, of fifteen counts of contempt pursuant to section 401 of title 18 of the United States Code and subdivision (b) of rule 42 of the Federal Rules of Criminal Procedure and fined the sum of $500.

The contempt citation arose out of respondent's representation of several defendants in a criminal jury trial.

The contempt charges were as follows:

> "The specifications charge generally that on numerous occasions during the trial the respondent made insulting and disrespectful remarks to the court and interjected improper and sarcastic comments during the proceedings. The following examples will suffice to illustrate his behavior:
>
> During the direct examination of a witness by the prosecutor, the respondent asked the court, within the hearing of the jury 'Are you permitting the nonsense that is going on in this courtroom?'
>
> The respondent interrupted the prosecutor's examination of a witness to declare that the proceedings were a 'farce'.
>
> During his cross-examination of a witness, the respondent gratuitously informed the jury of an item of information relative to the trial which had appeared in a newspaper.
>
> During the cross-examination of a prosecution witness with a criminal record, the respondent characterized the witness as 'the

scum of the earth,' said that the prosecutor was 'as bad as he is' and concluded his examination by saying, 'I think I have to throw up.'

During the cross-examination by an attorney for a codefendant of an expert witness testifying as to the probabilities of picking the winners of harness races, the respondent interrupted the proceedings by suggesting that each member of the jury be given $100 by the Government and taken to racetracks.

While the court was conducting a sidebar conference with other attorneys participating in the trial, the respondent approached the jury box and held private conversations with the foreman and another member of the jury."

The holding of the Appellate Division is set forth as follows:

"We find that the acts committed by the respondent were grossly disrespectful to the court and a violation of accepted and proper courtroom decorum. Such conduct is intolerable, for it destroys confidence in the fairness

of judicial rulings and judgments and perverts the trial procedure as a serious search for truth."

In conclusion the Court merely censured the respondent as follows:

"In view of counsel's long service at the bar and the fact that he has already been convicted and fined in the United States District Court, we deem the appropriate and adequate measure of discipline to be a public censure. Accordingly, the respondent is hereby censured for his misconduct."

It is respectfully urged herein that petitioner's position is quite similar to that of Mr. Castellano. Respondent has been at the bar for more than twenty-three years and has already been convicted and fined. Likewise, it is respectfully submitted that no different measure of discipline should have been administered herein.

For similar holdings see the cases of (a) In re Herman, 37 A.D. 2d 315, wherein an attorney committed contempt in two different trials and was merely censured for this conduct which was held by the Court to be "disorderly, contemptuous and insolent ... directly tending to disrupt the order and decorum of the Court", and (b) In re Sala, 11 A.D. 2d 425, whereby an attorney again was merely censured for acts

classified by the Court as "conduct as a whole was evasive and equivocating" and as such "unethical and ... prejudicial to the proper functioning of our courts ... warranting disciplinary action."

In re Kanarek, 33 A.D. 2d 280, is another recent case which has application herein.

Therein an attorney was charged with a thirty-count federal indictment claiming a scheme to defraud purchasers of securities.

He took a reduced voluntary plea to a single misdemeanor under the 30th count of indictment in full satisfaction of same. Then for conviction of the crime of conspiracy as a misdemeanor, he received the following sentence:

1. Fine in the sum of $1,000; and

2. Imposition of a sentence of imprisonment in addition to the fine was suspended; and

3. Probation for five years.

Throughout the pendency of the federal criminal proceedings Mr. Kanarek "steadfastly maintained his innocence" but ultimately took the reduced plea for the usual SERRANO reasons. To wit, as an attorney he wanted to "dispose of the serious indictiemtn containing charges of 29 other substantive counts of

felonies" without exposing himself to possible greater harm by continuing to trial.

The hearing Judge found that the foregoing facts "overcame any presumption of the respondent's unfitness to continue the practice of law."

The Court held that Kanarek's "actions in this instance constitute professional misconduct and cannot be condoned. Under the circumstances, we are of the opinion that a censure is an appropriate measure of discipline."

In Re Dagher, __ A.D. 2d __, 370 N.Y.S. 2d 679, is a recent case involving an attorney who failed to file income tax returns for some years. Although he was legal counsel for a local bank and was either an officer or director of same, he only received a censure.

John Papandon is an attorney from the same area. He stood trial on a felony charge before the court without a jury. Upon conclusion of the trial, decision was reserved for some weeks. However, shortly before the trial decision was announced, he was permitted to plead guilty to a misdemeanor. He was then sentenced to a jail term of five months. On appeal the sentence was reduced "to the time served." (People v. Papandon, __ A.D. 2d __, 329 N.Y.S. 2d 1000).

There is no published report of any disciplinary proceeding. Thus, no formal disciplinary proceedings were concluded by order of the Appellate Division for publication.

The following cases involve convictions of crimes by attorneys were the only sanctions imposed were censures:

1. In Re Siegel, 47 A.D. 2d 461, convicted of 56 misdemeanor counts.

2. In Re Lentini, supra, conspiracy to defraud.

3. In Re Stevenson, 39 A.D. 2d 355, income tax.

4. In Re Entes, supra, solicitation of business.

5. In Re Cohen, supra, solicitation of business.

6. In Re Ross, supra, causing federal employee to process avoidance of tax audit.

7. In Re Siegel, supra, conspiracy to pay bribes.

8. In Re Impellizzeri, supra, income tax.

9. In Re Harrison, 47 A.D. 2d 259, income tax.

CONCLUSION

Upon the foregoing this Court should grant the writ so that Section 90(2) of the Judiciary Law of New York may be declared unconstitutional.

Respectfully submitted,

MURRAY BOGATIN

APPENDIX A-OPINION OF APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, SECOND JUDICIAL DEPARTMENT, SUSPENDING PETITIONER

October 6, 1975

SUPREME COURT: APPELLATE DIVISION
SECOND JUDICIAL DEPARTMENT.

GULOTTA, P. J., RABIN, HOPKINS, LATHAM and CHRIST, JJ.

In the Matter Of
MURRAY BOGATIN, an attorney.
SUFFOLK COUNTY BAR ASSOCIATION,

Petitioner;

MURRAY BOGATIN,

Respondent.

No. 3156

Disciplinary proceeding instituted by the Suffolk County Bar Association. By order of this court dated May 21, 1974, the issues raised were referred to Honorable DAVID L. GLICKMAN, a Justice of the Supreme Court, to hear and report.

Enrico J. Constantino, II, Babylon, N. Y., for petitioner.

Ernest J. Peace, Mineola, N. Y., for respondent.

Per Curiam. In this disciplinary proceeding the petitioner has moved to confirm the report of Mr. Justice GLICKMAN to whom the proceeding had been referred for hearing and report. The respondent was admitted to the Bar by this court on June 27, 1951.

The respondent was charged with professional misconduct in that on October 11, 1973 he pleaded guilty in the County Court, Suffolk County, to the crime of attempted criminal contempt by refusing to testify before a Grand Jury after having been granted immunity, as a Class A misdemeanor, and that on November 21, 1973 he was sentenced to pay a fine of $1,000.

The repondent's answer admitted the conviction, but alleged that he was not guilty of that crime or of any professional misconduct.

The reporting Justice found the respondent guilty of the charge. After reviewing all of the testimony and exhibits, as well as the report of Mr. Justice GLICKMAN, we are in full agreement with the report. We find that the respondent is guilty of the charge. Accordingly, the petitioner's motion is granted.

For his misconduct, the respondent is hereby suspended from the practice of law for a period of six months, effective November 1, 1975.

APPENDIX B - DECISION OF COURT OF APPEALS OF THE STATE OF NEW YORK DENYING LEAVE TO APPEAL

2.

Mo. No. 1154
In the Matter of

Murray Bogatin, an attorney.
Suffolk County Bar Association,

Respondent,

Murray Bogatin,

Appellant.

Motion for leave to appeal and for a stay denied.

Decision Court of Appeals
Jan 8 - 1976

APPENDIX C - ORDER OF APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, SECOND JUDICIAL DEPARTMENT, SUSPENDING PETITIONER

At a Term of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, held in Kings County on October 6, 1975.

HON. FRANK A. GULOTTA, Presiding Justice
HON. SAMUEL RABIN
HON. JAMES D. HOPKINS
HON. HENRY J. LATHAM
HON. MARCUS G. CHRIST

----------x

In the Matter of

Murray Bogatin, an attorney. :

Suffolk County Bar Association,

Petitioner, : Order of Suspension.

Murray Bogatin,

:

Respondent.

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A disciplinary proceeding having been instituted in this court upon the petition of the Suffolk County Bar Association in respect to Murray Bogatin, an attorney and counselor-at-law, who was admitted to practice by this court on June 27, 1951; the petition praying that the respondent be disciplined for professional misconduct upon the charges therein set forth; the proceeding having come on before this court by notice of motion, dated March 6, 1974; and respondent having filed an answer thereto; this court by order dated May 21, 1974, having referred the issues raised by the petition and the answer to the Hon. David L. Glcikman, a Justice of the Supreme Court, to hear and to report with this court on July 2, 1975 together with a transcript of the hearing and the exhibits; and the petitioner having moved, by notice of motion dated July 11, 1975, to confirm the report, and the respondent having filed an affirmation in opposition thereto;

Now, upon the said petition, verified March 4, 1974, the said answer, dated September 21, 1974; the report, the transcript, the exhibits, the said notice of motion of petitioner in support of said motion, the affirmation of Murray G. Bogatin in opposition thereto; and upon all the papers filed herein; and Enrico J. Constantino, II, Esq., having appeared of counsel for the petitioner and Ernest J. Peace, Esq., having appeared of counsel for the respondent; due deliberation having been had thereon; and upon the per curiam opinion of the court herein, dated October 6, 1975, filed herein and made a part hereof, it is unanimously

ORDERED that petitioner's motion to confirm the report of Mr. Justice Glickman, filed July 2, 1975, is hereby granted, and it is further

ORDERED that the report and findings therein made by the said Justice are hereby confirmed; and the charge set forth in the petition is hereby sustained, and it is further

ORDERED that the respondent MURRAY BOGATIN is hereby suspended from the practice of the law for a period of six months commencing November 1, 1975 and continuing until the further order of this court with leave to respondent to apply for reinstatement after the expiration of said period of six months, upon furnishing satisfactory proof: (a) that during said period he has actually refrained from practicing law or attempting to practice as an attorney and counselor-at-law; (b) that he has fully complied with this order and with the terms and provisions of the written rules governing the conduct of disbarred, suspended and resigned attorneys, a copy of such rules being annexed hereto and made a part hereof; and (c) that he has otherwise properly conducted himself; and it is further

ORDERED THAT, pursuant to statute (Judiciary Law, § 90), that during the period of suspension and until the further order of this court, the respondent MURRAY BOGATIN be and he hereby is commanded to desist and refrain: (1) from practicing law in any form, either as principal or agent, clerk or employee of another; (2) from appearing as an attorney or counselor-at-law before any court, judge, justice, board, commission or other public authority; (3) from giving to another an opinion as to the law or its application, or any advice in relation thereto; and (4) from holding himself out in any way as an attorney or counselor-at-law.

Enter:

IRVING N. SELKIN

Clerk of the Appellate Division.

APPENDIX D-ORDER OF APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, SECOND JUDICIAL DEPARTMENT, DENYING REARGUMENT AND LEAVE TO APPEAL

At a Term of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, held in Kings County on November 5,1975.

HON. FRANK A. GULOTTA, Presiding Justice
HON. SAMUEL RABIN
HON. JAMES D. HOPKINS
HON. HENRY J. LATHAM
HON. MARCUS G. CHRIST

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In the Matter of :

Murray Bogatin, an attorney.

Suffolk County Bar Association, Order on Motion.

Petitioner, :

Murray Bogatin,

Respondent.

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In the above entitled disciplinary proceeding, this court by opinion, decision and order, dated October 6, 1975, having confirmed the report of Hon. DAVID D. GLICKMAN, filed July 2, 1975 and directed that the respondent Murray Bogatin be suspended from the practice of law for a period of six months, effective November 1, 1975; thereafter, by an order of this court, dated October 29, 1975, the said order of October 6, 1975 was amended to indicate that the effective date of respondent's suspension was extended to January 10, 1976; and the said respondent having moved by order to show cause, dated October 28, 1975, for reargument of the motion to confirm said report filed July 2, 1975, and upon said reargument, to vacate the said order of October 6, 1975, or in the alternative, for leave to appeal to the Court of Appeals from said order and to stay the said order pending determination of the appeal by the Court of Appeals;

Now upon the said order to show cause and the affirmations of Murray Bogatin in support of said motion and the affidavit of Enrico James Constantino II in opposition thereto and upon all the papers filed herein; and the said motion having been submitted by Murray Bogatin, Esq., respondent pro se and submitted by Enrico J. Constantion II, Esq., of counsel for the petitioner, due deliberation having been had thereon; and upon the decision slip of the court herein, heretofore filed and made a part hereof, it is

ORDERED that the said motion is hereby denied.

Enter:

IRVING N. SELKIN

Clerk of the Appellate Division.

BEST COPY AVAILABLE